

920229-902699

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

RE THE APPLICATION OF)	
)	
Lawrence G. Ponsi et al)	Examiner : Shapiro, Jeffery A.
)	
SERIAL NO. 10/780,429)	Group Art Unit No. 3653
)	
FILED: February 17, 2004)	Customer No. 23644
)	
FOR: Product Storing and)	
Dispensing System)	

BRIEF ON APPEAL

Honorable Director of Patents and Trademarks
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This brief is being filed in view of the Examiner's final Office Action of December 31, 2007 finally rejecting claims 1 through 20 of this application. An appropriate Notice of Appeal was filed with the Patent and Trademark Office on March 31, 2008. This brief is therefore due by May 31, 2008.

The fee of \$255.00 pursuant to 37 C.F.R. §41.20(b)(1) should be deducted from Deposit Account No. 12-0913, and any further fees required for this appeal should also be deducted from that Deposit Account.

(i) Real Party in Interest

This application is assigned to Sage Products, Inc., which is the real party in interest. The assignment has been recorded.

(ii) Related Appeals and Interferences

There are no prior or pending appeals, interferences or judicial proceedings known to the appellants which may be related to, directly affect

or be directly affected by or have a bearing on the decision in the pending appeal.

(iii) Status of Claims

This application was filed with 18 claims, and during prosecution, method claims 19 and 20 were added in a response filed with the Patent and Trademark Office on May 3, 2007. All of claims 1-20 have been rejected, and it is the rejection of claims 1-20 that is appealed. Rejected claims 1-20 are set forth in the appended Claims Appendix.

(iv) Status of Amendments

No amendments or response of any kind were filed subsequent to the Examiner's final Office Action of December 31, 2007.

(v) Summary of Claimed Subject Matter

Independent Claim 1

The invention as defined by claim 1 is directed to a product storing and dispensing system comprising a cabinet 12 having a plurality of product compartments 14 (page 4, lines 1-7). A temperature controller 40, which may be a thermo couple, controls the temperature in the cabinet 12 by means of controlling a heat source 22 (page 4, lines 15-18, page 5, lines 15-18).

Each product compartment 14 includes a proximity sensor 18 for sensing the presence of a product 16 when in the product compartment (page 4, lines 8-14). A processor 38 is connected to each sensor 18 for accepting sensor signals (page 5, lines 11-14).

A separate aging indicator 26 is located proximate each of the product compartments 14 and is connected to the processor, with the aging indicator having at least three product condition signals 28, 30 and 32 (page 4, line 19- page 5, line 2; page 6, lines 1-17). It is the processor 38 which selectively activates each of the three product condition signals (page 5, lines 19-23).

Thus, the product storing and dispensing system according to the invention separately indicates, for each of the product compartments 14, the

“age” of a product in each compartment by means of the displays 28 through 32.

Independent claim 11

The description of the subject matter of independent claim 11 is the same as that for independent claim 1, and reference is therefore made to the section immediately above. Claim 11 differs from claim 1, primarily, in that the claim requires that each aging indicator have three displays, which are the displays 28-32. Each display comprises a product condition signal (page 6, lines 1-17).

Independent claim 19

Independent claim 19 is a method claim, defining the process of the invention as described with respect to independent claim 1. The discussion above of independent claim 1 therefore also applies to independent claim 19. The process is described throughout the detailed portion of the specification, particularly at page 6, lines 1-17.

(vi) Grounds of rejection to be reviewed on appeal.

There are three grounds of rejection to be reviewed on appeal:

1. The rejection of claims 1-6, 9, 11-15, 18 and 19 under 35 U.S.C. §103(a) as being unpatentable over Dearing (US 2002/0183882) in view of Bastian (US 6,650,225).
2. The rejection of claims 7-9, 16 and 17 under 35 U.S.C. §103(a) as being unpatentable over Dearing in view of Bastian as set forth in the immediately preceding paragraph, when further in view of Chen (US 6,930,262).
3. The rejection of claim 10 under 35 U.S.C. §103 (a) as being unpatentable over Dearing in view of Bastian as set forth in paragraph 1 above, when further in view of Black (US 5,522,310).

(vii) Argument

The primary reference cited by the Examiner is published Dearing et al. published U.S. Application No. US 2002/0183882 (hereinafter referred to as

"Dearing"). Dearing is directed to a system where a microwarehouse, as Dearing identifies it, is provided with a series of locations or products, such as illustrated in Figure 6. The Examiner has pointed to paragraph 57 of Dearing for the concept of an inventory message which the Examiner seeks to equate to the concept of the aging indicator of the present invention. However, in Dearing, the inventory message is just that – a message that is in a central location so that a user can perform various tasks, such as removing an old product and replacing it. There is nothing in Dearing that suggests an aging indicator which is separately associated with each product compartment.

Claim 1 requires that there be a sensor for each product compartment for sensing the presence of a product in the product compartment. First of all, nothing in that nature exists in Dearing. In Dearing, it is not the presence of a product that is sensed, at all. Rather, it is whether or not a product has an RFID tag that can be detected and then, given information of the tag, certain activities can take place. Thus, if a product is inserted in a compartment of Dearing without any RFID tag, that product is not and cannot be sensed, and its presence will never be known. In the present invention, however, there is a sensor for each product compartment, and that sensor is for sensing the presence of a product, not a RFID tag or some other kind of identifier. That, it is submitted, is clearly missing from Dearing.

Claim 1 also requires that there be a separate aging indicator for each product compartment. In Dearing, there is no such aging indicator. What happens in Dearing is that if a tag on a product is read, that information is used to determine the characteristics of the product, including the possibility of aging. In the present invention, however, as claimed in claim 1, it is the presence of the product that commences the aging, and there is a separate aging indicator that is associated with each product compartment. Conversely, in Dearing, even if the products are sensed, there is only one aging indicator, which is the central computer, and there is no separate aging indicator associated with each product compartment.

Furthermore, claim 1 requires that the separate aging indicator of each compartment have multiple product condition signals. Dearing, on the other hand, has a central computer which can issue certain information based upon the reading of the tag on the product, but Dearing does not have a separate

product aging indicator for each compartment having multiple product condition signals. Indeed, Dearing does not have any product aging indicator located proximate each product compartment, let alone one which provides at least three product condition signals.

The Examiner has cited Bastian for its alleged disclosure of product indicators which indicates states or conditions of an item. That, however, is incorrect. The light indicator 80 of Bastian is a single light indicator, not a separate indicator proximate each product compartment. Furthermore, Bastian has made it quite clear what the light indicator 80 represents, and that is an identification for operators to distinguish orders designated for them. That is explained at column 12, lines 3-10. Bastian simply does not disclose or suggest using light indicators to depict the condition of an item, and nowhere does Bastian suggest that a light indicator be proximate each product compartment. Thus, even if the teachings of Dearing and Bastian were combined in some manner, that combined teaching does not disclose, suggest or render obvious the claimed separate aging indicator proximate each product compartment with each indicator having at least three product condition signals as set forth in claim 1 (or displays, as set forth in claim 11).

During the prosecution of the application, the Examiner has used Dearing and the RFID sensor of Dearing for the claimed element of "sensing" the presence of a product. In distinction, however, the sensor of the present invention is a proximity sensor, in that it identifies the actual physical presence of the product, not some other identifier, such as an RFID tag, which is the only product "sensing" by Dearing.

Thus, the combination by the Examiner of the teachings of Dearing and Bastian is lacking in several respects:

- 1) There is no proximity sensor for each product compartment for sensing the actual presence of a product. In Dearing, if there is no RFID tag on a product, it is not sensed, no matter how long it may be in a product compartment.
- 2) There is no separate aging indicator proximate each product compartment in Dearing, or Bastian, and therefore, necessarily, in the combination of the teachings of the two references. The claimed aging indicator of the present application requires at

least three product condition signals, again, proximate each product compartment.

- 3) Finally, there is no means in Dearing or Bastian, and therefore, necessarily, in the combination of the teachings of the two references, which suggests selectively activating the product condition signals of each aging indicator. First, there is no aging indicator proximate each product compartment, and second, there are not at least three product condition signals that can be selectively activated.

It is therefore submitted that the Examiner's rejection of claim 1, and its depending claims, is clearly in error, and should be reversed.

The same arguments as presented above also apply to independent claim 11. For the same reasons, it is submitted that independent claim 11, and its dependent claims, are allowable.

Finally, independent claim 19, although a method claim, has the same features as explained above in relation to claim 1, namely the sensing of the presence of each product, separately aging each product proximate the compartment for the product by indicating one of three product condition signals, and activating the product condition signals over a period of time. Thus, for the same reasons that claim 1 is allowable, claim 19, and its dependent claim 20, are submitted to be allowable, as well.

Ground (2)

Claims 7-9, 16 and 17 are dependent claims. For the reasons explained above with respect to independent claims 1 and 11, claims 7-9, 16 and 17 are submitted to be allowable.

Ground (3)

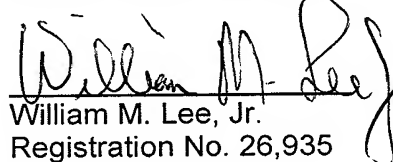
Claim 10 is dependent from claim 1, and for the reasons that claim 1 is allowable, claim 10 is allowable, as well.

CONCLUSION

The Examiner's rejections of the application have been demonstrated to be in error. Reversal of the Examiner is therefore believed appropriate and is solicited.

May 2, 2008

Respectfully submitted,

A handwritten signature in black ink, appearing to read "William M. Lee, Jr.", is written over a horizontal line.

William M. Lee, Jr.

Registration No. 26,935

Barnes & Thornburg

P.O. Box 2786

Chicago, Illinois 60690-2786

(312) 214-4800

(312) 759-5646 (fax)

CLAIMS APPENDIX

1. A product storing and dispensing system, comprising
 - a. a cabinet having a plurality of product compartments,
 - b. a temperature controller for regulating temperature in said cabinet,
 - c. a proximity sensor for each product compartment for sensing the presence of a product while the product remains in said product compartment,
 - d. a processor, connected to each sensor, for accepting sensor signals,
 - e. a separate aging indicator proximate each product compartment and being connected to said processor, each aging indicator having at least three product condition signals, and
 - f. means in said processor for selectively activating the product condition signals of each aging indicator.
2. The product storing and dispensing system according to claim 1, in which said sensor comprises an optical detector.
3. The product storing and dispensing system according to claim 1, in which said sensor comprises an infrared detector.
4. The product storing and dispensing system according to claim 1, in which said aging indicator comprises at least three displays, each display having a different one of said three product condition signals.

5. The product storing and dispensing system according to claim 4, in which said three displays comprise visual indicators.
6. The product storing and dispensing system according to claim 4, in which said three displays comprise a first display indicating a product is not ready for dispensing, a second display indicating that a product is ready for dispensing and a third display indicating that a product should be selected first for dispensing.
7. The product storing and dispensing system according to claim 1, including a heat source for said cabinet.
8. The product storing and dispensing system according to claim 7, in which said heat source comprises a heater controlled by said processor.
9. The product storing and dispensing system according to claim 1, in which said cabinet includes multiple columns of said product compartments.
10. The product storing and dispensing system according to claim 1, in which said temperature controller comprises the thermocouple.
11. A product storing and dispensing system, comprising
 - a. a heated cabinet having a plurality of product compartments,
 - b. a temperature controller for regulating temperature in said cabinet,

- c. a proximity sensor for each product compartment for sensing the presence of a product while the product remains in said product compartment,
- d. a processor, connected to each sensor, for accepting sensor signals,
- e. a separate aging indicator proximate each product compartment and being connected to said processor, each aging indicator having three displays, each display comprising a product condition signal, and
- f. means in said processor for selectively activating said displays.

12. The product storing and dispensing system according to claim 11, in which said sensor comprises an optical detector.

13. The product storing and dispensing system according to claim 11, in which said sensor comprises an infrared detector.

14. The product storing and dispensing system according to claim 11, in which said three displays comprise visual indicators.

15. The product storing and dispensing system according to claim 11, in which said three displays comprise a first display indicating a product is not ready for dispensing, a second display indicating that a product is ready for dispensing and a third display indicating that a product should be selected first for dispensing.

16. The product storing and dispensing system according to claim 11, including a heat source for said cabinet.

17. The product storing and dispensing system according to claim 16, in which said heat source comprises a heater controlled by said processor.
18. The product storing and dispensing system according to claim 11, in which said cabinet includes multiple columns of said product compartments.
19. A method of storing and dispensing products, comprising the steps of:
- a. providing a cabinet having a plurality of product compartments,
 - b. regulating temperature in said cabinet,
 - c. sensing, in each product compartment, the presence of a product while the product remains in the product compartment,
 - d. separately, for each product compartment and proximate the product compartment, aging of product in the compartment by indicating one of at least three product condition signals, and
 - e. selectively activating the product condition signals over a period of time.
20. The method according to claim 19 including the step of repeating steps c-e for each product compartment after a product is removed and another product is inserted in the product compartment.

Evidence Appendix

None.

Related Proceedings Appendix

None.